Filed 3/28/19 P. v. Carr CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. PAUL CARR, Defendant and Appellant.	D072834 (Super. Ct. No. SCE364831)

APPEAL from a judgment of the Superior Court of San Diego County, John Thompson, Judge. Affirmed in part, reversed in part.

Laura Schaefer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Elizabeth M. Kuchar, Deputy Attorneys General, for Plaintiff and Respondent.

An information charged defendant Paul Carr (sometimes, defendant or Carr) with the first degree murder of victim Craig Hodson (Craig). (Pen. Code,[1] § 187, subd. (a).) The information further alleged Carr personally used a firearm (§ 12022.5, subd. (a)) and intentionally and personally discharged a firearm causing death (§ 12022.53, subd. (d)). The jury returned a guilty verdict and found the two enhancements true. The court sentenced Carr to 25 years to life for the murder, added an additional 25 years to life for the personal discharge enhancement, and stayed the sentence for the personal use enhancement.

Carr on appeal contends that the court abused its discretion in connection with a series of evidentiary rulings; that such errors were cumulative and led to a denial of due process; and that the case should be remanded for resentencing on the personal discharge of a firearm enhancement in light of Senate Bill No. 620, signed by the Governor on October 11, 2017. As we explain, we agree the case should be remanded *only* for resentencing, as the People concede. In all other respects, we affirm the remaining portion of the judgment.

FACTUAL BACKGROUND

People's Case-in-Chief

In October 2016, Craig Hodson was living in Pine Valley with his high-school sweetheart and wife of 36 years Maria Hodson (Maria) and two of their 11 children — C.H., then age 11, and Christian, then age 22. The Pine Valley property consisted of a

---

1 Unless otherwise noted, all further statutory references are to the Penal Code.

main home, where the Hodson family lived, and three cabins denoted A, B, and C, which the family rented out. Carr moved into cabin B in May 2012, and into cabin C in August 2013, where he lived until the homicide on October 16, 2016.

Maria testified that when Carr initially moved onto the Pine Valley property, their relationship was "fine" and there were "no problems." That changed in November 2014, as Carr became "pretty comfortable" "roaming" the Pine Valley property. On November 2, 2014, a Sunday, Maria was at home as she had broken her wrist a few days earlier. Maria that day saw Carr back up his vehicle to the family's private garage. Maria asked Carr what he was doing. Carr in response claimed he was picking up firewood that Craig had "fronted him." Because Maria did not know anything about her husband's agreement with Carr, she asked Carr to come back a little later, after Craig returned home. Carr refused, stating that he already had spoken to Craig about the firewood, that Maria needed "to start acting like a Christian," and that she could "[g]o to hell." Maria closed the door and called the sheriff. Later that evening, Craig told her he had given Carr permission to take the firewood but had not told Maria about it.

Because this incident greatly upset Maria, the Hodsons decided Carr should move from their Pine Valley property. Maria in particular wanted Carr to move out because he had a "very bad temper" and "was only going to cause trouble in the near future." Although they had a 60-day notice to vacate premises prepared in November 2014, Craig did not serve the notice on Carr because Craig "felt sorry for him." Craig, acting as "kind of like the mediator" between Maria and Carr, however, instructed defendant not to come near the main home, the family's garage, or Maria.

According to Maria, at around this same time Carr also started having issues with their other tenants. Maria recalled an incident when Carr became angry because he believed another tenant was playing his music too loudly. Maria heard defendant angrily "screaming and shouting" at the other tenant. Maria went outside and instructed defendant to return to his cabin, as she would speak to the other tenant. As he was walking back to his cabin, Maria heard defendant tell the other tenant, "Do you want a piece of me, you fucking asshole?"

As time went on, Maria became even more uncomfortable around Carr, particularly because of his frequent "anger outbursts." Maria did not want any contact with Carr. In September 2015, defendant gave Maria a cookbook holder as a gift. Rather than accept the gift, Maria gave it back to defendant, along with a note that read: "I have forgiven you of the verbal abuse sustained from your uncontrolled anger; however, at this time I do not feel I can converse with you other than the occasional hello. While your gesture may be thoughtful, I'm not comfortable accepting this gift. Please respect my privacy and my yard and my home." Maria recalled another incident when she, Craig, and their daughter were in the car near the communal dumpster, dumping trash. Carr came outside and told Craig he "did not appreciate any bitching from [Maria] when he's trying to apologize," in reference to the gift Maria had returned. As a result of the ongoing tension between them, Maria testified she would not go outside if Carr was outside, as she sought to avoid him at all times.

Cass Hodson, Craig's older brother, testified their respective families did a lot together over decades. Cass first met Carr in about 2015, after Craig had asked his

brother to visit defendant in a convalescent home where defendant was temporarily living. Over time, Cass and defendant became friends. Both Craig, who had baptized defendant, and Cass encouraged defendant to go to church and bible study. Some days, Carr would call and speak to Cass two or three times.

Cass testified he acted as a "sounding board" for Carr, as Carr would often call and complain about others, including Maria. On a couple of occasions Carr talked about suicide. As part of fellowship, Cass wanted to encourage defendant, and, because of their friendship, defendant confided in Cass. Cass recalled one conversation with defendant about three months before the homicide when Carr said he would "be doing . . . [Craig] a favor by killing that bitch," referring to Maria.

DeAnne Hodson, Cass's wife, testified she became acquainted with Carr through her husband and their church. Although Carr mostly called Cass, sometimes he also would call her. At some point, Carr started opening up about his frustration with Maria and Craig, particularly after he had an "exchange" with one of them. Most of the time, DeAnne just let Carr vent. However, if Carr began to say things that were too negative, DeAnne would remind him, "Please don't talk about my sister-in-law [i.e., Maria] that way. I love my sister-in-law." According to DeAnne, when she made these types of comments Carr typically backed off. DeAnne recalled one time Carr imitated what DeAnne referred to as the "Godfather thing" and suggested Craig "should slap her [i.e., Maria] around a little bit and get her to be submissive."

Josephine Silberman, Maria's niece, was a caregiver for Helene Loxas, an elderly woman who used a wheelchair and who also lived in one of the cabins on the Hodsons'

Pine Valley property. Silberman testified that in the months leading up to the homicide, Carr would often come down to Loxas's home and in their presence speak about Maria, one time even saying he wanted to shoot Maria "in the ass." Silberman also recalled defendant saying Craig should not have been "a preacher because he [i.e., Carr] knew more about the word of God than [Craig]."

Maria recalled an incident on October 1, 2016, the same day there was a street fair in Jacumba. That morning, Maria saw Carr's vehicle parked in front of the dumpster, which the Hodsons had recently moved away from defendant's cabin in order to minimize their contact with him. Craig already had gone to the street fair, as he had a booth for the church. Before leaving to join her husband at the street fair, Maria wrote Carr a note that read: "Please do not park here. Thank you." As she was leaving the note under the windshield wiper of defendant's vehicle, she saw Carr come "charging" toward her. He grabbed the note, crumbled it, and threw it at Maria as she drove away. Maria described Carr as being angry. She rolled up her window as she drove away because she did not want to be subject to more of Carr's verbal abuse.

At the street fair, Maria joined Cass, her husband, and DeAnne. Maria decided not to tell Craig about the note incident, as she did not want to "ruin his day." About 15 minutes later, Maria saw Carr drive up and park his vehicle. Maria then told Craig about the incident, as Carr came "storming up the walkway" toward their booth. Carr demanded Craig speak then and there with him. Craig in response calmly stated, "Not now, Paul. I will talk to you when I get home."

According to Maria, Carr, however, continued to argue that he had been parking in the same area on the Pine Valley property for years; that by leaving the note on his car, Maria had engaged in "total bullshit harassment"; and that he was going to "teach [Maria] some respect." Maria estimated this altercation lasted about three minutes, and caught the attention of others, who could see and hear Carr acting in an "angry, hostile" manner.

Maria testified Craig was calm during the entire altercation, even when at one point he told Carr to "watch how you talk to my wife." Craig did not get up from his chair, yell at Carr, or otherwise engage in any other type of threatening behavior toward him. Craig did not want to talk about what had happened at the street fair until they got home.

Cade Baily was a former customer of Craig's propane delivery business. He met Craig in December 2014, and interacted with Craig every couple of months, as Craig would "stop by unannounced just to see how [they] were doing as a family." Baily and his family were at the street fair on October 1. After walking around for a few minutes, Baily saw Craig manning a booth.

Baily testified that as he and his family approached the booth to say hello, he heard "very loud yelling and screaming." Baily instructed his family to stop and he alone went toward the booth. It was then Baily saw Carr standing in front of the booth, "screaming and yelling" at Craig and using "a lot of vulgarity." Baily heard defendant tell Craig he needed to "put a fucking muzzle on his wife." Baily did not hear Craig yell back at, or act aggressive toward, Carr, even after defendant made the "muzzle" comment. Baily instead observed that Craig was "very collected in his demeanor,"

although it was also evident that Craig was becoming "frustrated and aggravated" by Carr's behavior. Baily testified the confrontation lasted about five minutes. As Carr walked back to his car, Baily heard defendant cussing "under his breath."

A little later, Baily spoke to Craig, who had walked away from his booth in what Baily assumed was Craig's attempt to calm down. Craig then told Baily about the situation between defendant and Maria. Craig confided he had tried to find a solution to end the acrimony between them, but decided it was time to "start the eviction process" because it was affecting his marriage with Maria.

Cass testified he and DeAnne were at the booth with Craig and some of Craig's older children during the October 1 street fair. Cass saw defendant walking up to their booth. At that point, Cass did not anticipate any problems and believed Carr was coming to sit with them at the booth. However, once at the booth, Cass observed defendant was "irate," as he began "hollering" at Craig. Cass stated he and Craig just let defendant "have his say, as it were," as they always sought to be "gentle to everybody." DeAnne stated defendant kept pointing at Maria as he angrily complained to Craig about her. Cass described Craig as being "embarrassed" by defendant's outburst. Cass did not think Carr's statements about harming Maria were serious, as Cass believed defendant "was just kind of . . . venting out of anger."

After returning home from the street fair, Carr wrote his own notes to Craig in response to Maria's. Defendant wrote: "Been parking here for over three years to check fluids. You can't ever see it from your house. Stop this harassment. . . . [¶] Craig, I do

not wish to talk until October 4th, 2016. In the meantime, please keep that evil thing you call a wife away from my vehicles. Thank you. . . . P.C."

Maria testified after the street fair incident, Carr began sending Craig "degrading, demeaning, angry, hostile text messages." The messages scared Maria, as she perceived Carr was just "getting angrier and angrier." Craig would not respond to most of the messages, which appeared to make Carr even madder. Maria shared with DeAnne one of Carr's last text messages to Craig, in the hope that Cass would call defendant and "appease his wrath."

Carr text messaged Craig regarding the note Maria had left on his vehicle's windshield, stating: "[P]lease ask Maria not to touch my car. I park by the dumpster to have it flat to check fluids. Enough of this bullshit harassment. I have parked here for over three years. She can have her bible study back. She needs it more than I. I always check fluids. I have parked there for three years. … Please tell her to never touch my vehicles again. She shames herself and undermines your moral authority as a pastor."

Carr sent another text message to Craig on October 2 at 2:53 p.m. stating, "I have left a note for you and a copy of Maria's note. I will speak to you on October 4th after my appointment with my attorney. I beg you just to be left alone and in peace in the last year of my life. Maria will not stop her harassment. I will remind you that you need to notify me 24 hours in advance in writing before entering this unit or the backyard. California law. This bear has been poked one too many times by your wife. No more."

About an hour later, Craig received another text message from Carr, which read: "Craig, I need to bury a bird. May I finish task? If not, it's on your vice. Not trying to cause hassle. Just was looking for a shovel. Chad [i.e., one of the Hodsons' sons] left it on [the] ground. Is now on propane tank. Please advise. Thank you." Later that same day, Craig received another message from Carr stating, "Your . . . book is in front of my Rodeo. Also, notes tacked on the door are for you. Please retrieve both, as I no longer know [where] Maria's imaginary line of death is. Thanks."

On October 3, Craig received the following text message from Carr: "I returned [the] . . . book to DeAnne. I would not waste time or money on an unlawful detainer, as I want to get out of this cold, rat-infested shit hole as fast as I can. I meet with my attorney tomorrow. In the meantime, please tell Maria to keep her hands off my vehicles. Thank you."

On October 4, the Hodsons received a call from an attorney claiming to represent Carr. Maria was in the room when Craig took the call. The attorney advised the Hodsons that Carr was going to sue them for harassment and for property damage to his vehicle. Maria testified Craig told the lawyer during their 15-minute conversation that they intended to evict Carr.

The following day, October 5, Craig personally delivered a 60-day notice to vacate to Carr. That notice to vacate had been prepared by an attorney family member. According to Maria, after the street-fair incident, Craig finally realized that Carr "had no restraint on his behavior or his anger outbursts." Christian testified he spoke with his father after the incident at the street fair. Christian "never" heard his father "express any

anger or frustration towards" Carr, despite the fact the number of incidents between defendant and Maria seemed to be increasing. According to Christian, before the October 1 incident Craig tried to get Maria to "forgive" and "pray" for Carr, as Craig sought to work out a solution to end the hostility between them.

Silberman recalled Carr complaining to Loxas about being evicted from his home. During this conversation, Carr stated he had a lawyer and the Hodsons would be "sorry that they messed with him because he's going to take their property." Silberman recalled another statement Carr made after she asked him if he was going to bible study at the church. According to Silberman, Carr responded, "No, because [*sic*] didn't bring my gun."

Maria testified she suggested Craig have a third party serve Carr with the 60-day notice, as she was worried about defendant because he was so angry. Craig, however, did not believe it was right to involve anybody else, or subject them to Carr's verbal abuse. Maria went into the yard with Craig and waited with her phone, which she had "pre-dialed [to] 911," as she watched Craig go up to Carr's cabin, knock on the door, and go inside. He left the front door open.

Craig received a text message from Carr on October 9. Again, impliedly referencing the simple note Maria had left on defendant's vehicle eight days earlier, the message stated: "Craig, sooner or later we will have to talk like adults. In the meantime, I will need to use the common area for checking vehicle fluids. The basketball court is not an option. My furniture and other items will be listed online for sale. Please keep Maria away from me and my belongings or Randall [i.e., defendant's attorney] will get a

TRO against her. Let's not escalate the situation. Thank you." Maria testified that after she had placed the note under the windshield wiper of Carr's vehicle on October 1, she had not touched any of his belongings or had any contact with him.

On October 14, two days before the homicide, Craig received several text messages from Carr. One message read: "Okay, Craig, I guess you think it is funny to ignore my texts, but it is not. I have tried to be decent about the situation, but I'm trying to enjoy my [football] game and now I have to worry about Chad [i.e., one of Maria and Craig's sons] coming to my door for food, water, or to use the bathroom. Here is the bottom line. Keep your F'ing crazy ass family away from me. No more of this BS."

Craig that day also noticed a "very deep scratch" on his 2016 truck, which had not been there the day before. Maria testified that the night before, her husband had left his truck at home and driven another car into town, while Carr remained on the Pine Valley property. Despite the fact Craig and Maria both believed Carr had intentionally scratched the truck, according to Maria her husband did not get upset or attempt to retaliate against him.

Craig II testified that he was working with his father Craig the entire week before the homicide; that he and his own family lived about 15 minutes away from his parents' Pine Valley home; and that on Thursday October 13 — three days before the homicide, his father's 2016 truck was undamaged, as Craig II repeatedly walked back and forth past the truck while at the jobsite. Craig II further testified his father that day left the jobsite a little early to participate in a class; that Craig thus drove the truck home and took another car to the class, as the truck was full of tools and materials; and that first thing Friday

morning, he drove to his parents' home to load up more materials and then noticed a "huge glaring white scratch" on the passenger side of the truck's bed, which had not been there the day before.

Craig II believed Carr had damaged the truck because he was the only person on the property the night before when Craig and the family had gone to Jacumba and because he held "ill will" toward Craig. Craig II expressed this view to his father. Although disappointed by the damage, according to Craig II his father did not overreact or appear too upset, as he was "not very materialistic." Craig II never heard his father "express any anger or hostility . . . towards the defendant," even after Craig's truck had been scratched. Craig II did not tell Maria about the scratch because he knew it would upset his mother and he "didn't want to add fuel to the fire."

The day before the homicide, Carr text messaged DeAnne stating he needed to talk. When DeAnne responded she was busy, Carr messaged back it was "urgent." DeAnne testified that she then spoke to Carr; that defendant was upset because her nephew Chad was on the property and Craig and Maria had left; and that defendant was worried that Chad was going to knock on his door and ask to stay with him. DeAnne responded that Chad was not supposed to be there and advised Carr to "[s]tay out of it," as Chad was not his child and it was none of his business.

DeAnne testified that during this same time frame Carr also spoke with her about being evicted from cabin C. He told DeAnne he was unhappy about being evicted because he was a "terminally ill man." He nonetheless appreciated being given 60, rather than 30, days to move.

On the day of the homicide, a Sunday, Craig that morning received the following message from Carr: "Final text message. 'Since you are being rude and evasive and refused to answer my texts, I will no longer communicate in this format. Please advise me when you will replace the hose. Also, even though I retained Mr. [Randall] Leavitt [i.e., defendant's attorney], I do have to pay additional items like restraining orders, et cetera. I guess I will have to leave notes on your car or have registered mail sent. By the way, when you baptized me you mentioned false swearing to the Lord. Remember that when you get behind the pulpit today. Hypocrite."

At 2:15 p.m., Craig responded to this message: "This is today's complaint. Mr. Carr, your texts, like your conversations, are too argumentative and full of smears. One of your last texts I shared for your lawyer on his answering machine. I told him I couldn't communicate with you while you are so full of hostility." Craig in response received the following text message from Carr: "No more complaint. Just communicate with me like a normal person instead of sticking your head in the sand. I said I am trying to be decent about this. You seem to want me to suffer more. When will you replace the hose?"

Craig then received another text message from Carr, which stated: "If you answer, we don't need attorneys to get involved. Just answer simple questions, bozo, and both of our lives will be easier." Craig texted back, "I told you yesterday I was replacing the hose. I just finished watering the top property for the year and was bringing down the hose, but not before I received one of your special texts." When a message back from Carr asked, "When?" in reference to the hose, Craig wrote, "If anything breaks that I am responsible for, text me and I will respond in a reasonable time. Until then, as we always

like to be left alone, just like you." Craig then messaged, "It's there," referring to the hose, and then received the following from Carr: "Thanks. Is communication really that hard for you? Note. I am not a mind reader. Civil communication between us is all I ask for. I am under enough pain and stress as it is. Thanks."

After more messages were traded back and forth between Craig and Carr regarding, among other subjects, defendant's moving out and a list of what the Hodsons expected defendant to clean in the unit, Craig at 3:42 p.m. wrote: "No more texts today, please." Shortly thereafter, Craig received back the following message: "Fine. No more. But your memory is shot," which was in relation to the condition of cabin C when Carr had moved in.

Earlene Giordano testified she lived on another rental property owned by the Hodsons. The property was located on Live Oak Trail. A few days before the homicide while dumping her trash in the communal dumpster on the Pine Valley property, another tenant who was elderly and in a wheelchair (i.e., Loxas), called out to her and asked her to go to Carr's cabin because her electricity had gone off. Giordano went to cabin C, knocked on the door, and explained the situation to Carr, whom she had never met and who appeared frustrated by the interruption. As Giordano drove off, she saw Carr in her review mirror walking toward the other tenant's cabin.

At about noon on the day of the murder, Giordano opened her front door only to find Carr standing on her porch. Carr, who again appeared angry and frustrated, asked Giordano, "Do you know who I am?" "Stunned" by Carr's presence, as she had just met him when they briefly conversed a few days earlier, Giordano replied "yes" and asked

Carr how he knew where she lived. Carr responded, "I followed you here," then went on to say, "I want to tell you that you need to watch your back, because you're going to get evicted next." When Giordano asked Carr how he knew that, he replied, "I just know" and then added, "They're evil people and they're evicting me, and I'm just warning you." Giordano testified Carr made her feel uncomfortable, and she also did not like him talking about the Hodsons in such a manner. She told Carr if he did not immediately leave she would call the sheriff.

About 5:00 p.m. later that day, Giordano returned to the Pine Valley property to dump more trash. She saw Craig outside. After addressing Craig, she saw Carr "peeking out the window" of his cabin. Giordano testified she told Craig not to turn around because Carr was spying on them. She also told Craig, "You really need to be careful. I have a really bad feeling." Craig in response told Giordano it would be "okay" and not to worry.

Chad, the Hodsons's son, testified that a few weeks before the homicide, he went to cabin C and asked Carr if he could temporarily live with him. Chad then was completely unaware of the ongoing tension between his parents and Carr. Carr refused. Chad thereafter moved into the room located in the back of his parents' garage.

Maria testified that at about 6:30 p.m. on the day of the homicide, Chad returned to the main house. Shortly thereafter, Craig went to Carr's cabin to drop off the two-page cleaning list defendant had requested in a text message from earlier that day. Before leaving, Maria reminded Craig to "be careful" and joked he should not "dent [Carr's]

door," a reference to Carr's claim that Maria allegedly had damaged his vehicle when she left the note on his windshield on October 1.

DeAnne testified she received a text message from Carr at 6:42 p.m., or about 30 minutes before the homicide. DeAnne received this message while she was on the phone with Maria, who had called to speak with DeAnne about the various messages Carr had been sending to Craig. The 6:42 p.m. message from Carr read, "Hi, my dearest sister Dee. I know that you will not get this text today, but I need to get this off my chest, as I can't stop crying right now. Please keep this private. [¶] Since I last spoke with you, I thought Craig would just open a normal line of communication with me. Instead, he said and texted some flat out lies about me. All I wanted was to attend a short bible study and Maria had to provoke me. Yes, I am only human. I did lose my temper after three years of abuse, but Craig does not remember all the good things I have done for him.

"I am afraid, because for the first time in my life I am — I think I am losing my faith. I wish Cass was a pastor, as he actually cares for his flock. Please forgive me for sharing this burden, but everyone I ever loved is dead. I am truly alone."

DeAnne testified she tried to read the text after she hung up with Maria, but because she had a new cell phone and was "fairly new at texting," she was unable to read the entire message until it was read to her by a detective investigating the homicide.

While in the kitchen preparing lunch for Craig and their son Craig II for the following work day, Maria testified she heard about four or five gunshots. Maria yelled out to Christian, asking if he also heard the gunshots. When Christian confirmed he too had heard gunshots, Maria panicked.

Christian went outdoors to investigate. As Maria was heading out the door toward the garage where Craig had just been cleaning, she saw Christian already returning, saying "it was Paul Carr." Maria looked outside and saw Carr "rapidly" walking away from the garage, towards his cabin. Maria testified she went back inside the house and "frantically tried to find [her] phone" to call 911.

Maria testified her son Christian was the first to find Craig, who was on the ground behind the garage, unconscious, and bleeding. Christian performed CPR on his father until paramedics arrived. Shortly thereafter, Craig was pronounced dead at the scene.

Christian testified that on the day of the homicide, he was doing some fencing work at a nearby property until he returned to his parents' Pine Valley property at about sunset. A little later, Craig and Christian's brother Chad returned from the garage. Christian overheard Craig telling Maria he was going to "put, like, a checklist, a cleaning checklist, and leave it on [defendant's] doorstep," and Maria respond in jest that Craig better not put the list on defendant's windshield. Craig also asked Christian to clear out some car parts in the garage, which was cluttered, as Chad was living in the room in the back of the garage. Craig then left through the front door of the main house.

A few minutes later, Christian heard about three or four gunshots in "rapid succession." Immediately before the gunshots, Christian did not hear any arguing or the sound of any machinery, including from a "pole saw" that Craig kept in the garage. When asked about the pole saw, Christian testified it was a "piece of crap," as it was a

cheaper model that took "minutes" to start because of "carburetor problems." Christian testified he used the pole saw about once a year to trim tree branches.[2]

Because it was dark outside when he heard the gunshots, Christian testified he felt "immediate alarm" because his father had just gone outside alone. Christian testified he went into the living room, opened the front door, and looked outside. Christian then saw Carr "walking along the side of the garage" holding a flashlight in one hand and another item Christian could not make out in the other hand. Christian watched Carr head toward the back of the garage. Thinking the "worst," Christian immediately went to his bedroom and grabbed a shotgun he "legally own[ed]." Christian instructed Maria to stay inside and lock the door. According to Christian, his mother was then "pretty alarmed" because Craig was not answering his telephone.

As Christian approached the garage, he saw Carr walking up the cement driveway toward his cabin. This time, Christian had a "better view" as he saw Carr was holding a handgun that was intermittently illuminated by the flashlight. Christian heard Carr say, "You're not so tough now," or words to that effect, as if Carr was "talking to himself." Christian looked inside the garage but did not see his father. However, Christian saw a trash can had been knocked over toward the back of the garage and saw the back door

---

2 As discussed in more detail *post*, about five days after the homicide, sheriff deputy investigators attempted to start the pole saw, which attempts were videoed. Investigators were unable to start the pole saw after three attempts. After several pulls of the chain, the pole saw started on the fourth attempt. The video, which was shown to the jury, also recorded the sound made by the pole saw from various distances when it was running.

open. Christian walked all the way around the other side of the garage and found Craig lying in the dirt in a pool of blood, behind the back door of the garage.

Christian put down his shotgun, cradled his father and took him inside the garage to assess his injuries. Craig was nonresponsive. Christian estimated paramedics came to the property about 20 minutes after the call for help. While they waited, Christian continued CPR on his father. At one point, Christian and Maria saw Carr come out of his cabin and "sit down." Christian in response grabbed his shotgun and set it next to his father while he continued to perform CPR.

Sheriff deputies arrived on the scene beginning at about 7:30 p.m. Deputy Ropati Pisia testified he drove to Carr's home and used his PA system to call defendant out of the home. Carr at the time was on the phone with 911 dispatch. Carr, through a closed door, stated he was coming out, but to "hold on" because he needed a "cane" for assistance. Once outside, Deputy Pisia saw Carr was also using a "breathing apparatus." Carr then made a quick "unsolicited statement" to Deputy Pisia that the victim had come "at him with a chainsaw." Carr then started complaining he was having a "heart attack." Carr told deputies the gun he used to shoot Craig was inside, next to the front door, unloaded. After securing Carr, Deputy Pisia ran to the crime scene where he found paramedics working on the victim, who appeared deceased.

Defendant's gun was later identified as a Hi-Point CF .380. Deputies and their team of investigators ultimately found four cartridge cases in the garage area, each with the head stamp "WIN .380 auto." Blood drops were observed extending the entire length of the garage floor. Investigators opined that Craig was inside the garage when a

minimum of four bullets were fired from Carr's semiautomatic handgun; that after being injured, Craig went to the "exterior west of the garage, and remained at that location for a period of time"; and that he was subsequently moved back into the garage (by Christian), where he was pronounced dead.

Chad testified that on the day of the homicide, he helped Craig clean the garage. At some point, he left the garage and went to the main house to use the bathroom. While in the bathroom, he heard through an open window at least three gunshots, then his father twice scream for Maria. Chad went outside and saw his younger brother Christian carrying their father. Chad called 911 at his mother's request.

Maria knew Carr had a gun or guns inside his cabin. About a year and a half before the homicide, another tenant had complained about defendant "randomly firing his gun" on the Pine Valley property. As a result, Craig told defendant no more shooting guns. Craig owned a "little .22" single-shot rifle he kept on the bedroom wall as an heirloom. Craig did not own any other guns.

Christian testified that shortly after Carr moved onto the Pine Valley property, he approached Christian and showed him a shotgun he owned. Christian also recalled seeing Carr shooting a rifle in the "backyard" on occasion.

Homicide detective Troy DuGal of the San Diego Sheriff's Department testified he arrived at the crime scene at about 9:24 p.m. After being briefed, he and another detective went to the hospital where Carr was undergoing treatment. As they were processing Carr at the hospital, defendant made the unsolicited statement, "I will be dead

before the end of the trial," or words to that effect, as Carr claimed he had several serious medical issues.

Paramedic Scott Countreman testified he was in the ambulance with Carr as he was being transported to the hospital. As they were en route, Countreman asked Carr what had happened, to determine what "pre-cursed [Carr's] symptoms." Defendant told Countreman "he was watching the – a playoff baseball game when he noticed his motion light go off. As he does normally at that hour of the evening, he always brings his handgun to the door because he lives out in the middle of nowhere. [¶ He] [n]oticed that there was a note left on the door. He read the contents then went down to the landlord's property to discuss those contents." Countreman testified Carr claimed there had been "an exchange of words. The – patient Number 1 [i.e., Craig] came at him with a pole saw. The suspect, or patient Number 2, did not remember if the pole saw was running or not due to adrenaline. He fired two shots and then returned home." On further questioning by the paramedic, Carr stated he had a "few shots of liquor" that evening, although Countreman noted defendant showed no signs of impairment.

Detective DuGal testified he left the hospital and returned to the Hodsons's property to participate in the search of Carr's cabin. Inside, they found ammunition stored in various items throughout the home, a hunting knife, a fully loaded revolver and a holster in a wooden box, a rifle, another loaded firearm, and two loaded magazines for the semiautomatic weapon that another detective already had collected, which they believed was the weapon that had killed Craig.

San Diego Medical Examiner Bethann Schaber testified she performed the autopsy of Craig. Dr. Schaber opined Craig had been shot multiple times, as he had a total of five gunshot wounds, and also had suffered some minor blunt force injuries. One of the bullets entered the right side of Craig's chest, injuring both his lungs and aorta, and exited the left side of his chest. Dr. Schaber opined that an injury to the aorta would cause rapid blood loss and was immediately life-threatening. Dr. Schaber further opined Craig died from a perforating gunshot wound to the chest.

Defense Case

Carr was 61 years old and suffered from a variety of health issues at the time of the shooting, including having a chronic breathing problem that made it difficult for him to engage in normal activities. Carr testified he met Craig through a mutual friend, as defendant was living in a motor home and looking to move to the "back [country]," where there allegedly was less crime. Initially, Carr moved into cabin B, where he lived for almost a year, until he moved into cabin C.

Carr met Cass and DeAnne a few months after moving onto the Hodsons's Pine Valley property, when he participated in a group bible study at Craig's home. Defendant also started attending church services in Jacumba, where Craig served as pastor. As time went on, Carr became less involved in the church, as it was "obvious[]" Maria did not want him around. Carr testified he spoke regularly with both Cass and DeAnne, and even went to their home on occasion for visits and dinner. Carr denied ever telling Cass that he would be doing Craig a "favor" if he "killed that bitch" Maria, or otherwise saying anything to Cass or DeAnne about wanting to hurt Maria.

Carr met Chad after moving into cabin C, as he paid Chad to do some yardwork around the cabin. A few months before the November 2014 "firewood incident" with Maria, Chad asked defendant for a ride into Jacumba. Carr agreed. According to Carr, Chad then went to the room in the garage where he had been staying and grabbed some of his belongings. Maria came outside and started "kind of yelling" at Carr, who up to then did not realize that Chad was permanently leaving home to go and live with Silberman in Jacumba. Carr testified his decision to give Chad a ride into Jacumba angered Maria, and initiated the problems between them.

Carr testified he met Maria when Craig was showing him cabin B to rent. Initially, defendant and Maria got along fine, without any issues. Carr testified that on a Friday in November 2014 he paid Craig $90 for firewood, which Christian was supposed to deliver the following day. Because the firewood still had not been delivered two days later, and because defendant needed to burn firewood to reduce the humidity inside his cabin to help him breathe, he went in his vehicle to pick up enough wood to start a fire.

As he was loading some wood into his vehicle, Maria opened the door and demanded to know what he was doing. Startled, Carr told Maria he needed the wood. Carr testified Maria in response said, "Well, don't touch that wood" and insisted he wait until Craig returned home to take any wood. Because Carr was having trouble breathing, he decided he could not wait, and he thus told Maria to "go to hell" and took about eight pieces of wood to start a fire.

After returning home with the wood, Carr testified he received a call from the sheriff. Carr explained he had not stolen the firewood and had Craig's "permission" to take the wood. Carr testified he did not tell the sheriff he had paid for the wood because "Craig didn't want a receipt involved." Craig later spoke to Carr about this incident, telling defendant to "let it go" and "not to worry about it."

Because his relationship with Maria was "unpleasant," Carr wanted to buy her a gift. DeAnne suggested a cookbook holder. Carr in September 2015 bought both DeAnne and Maria the same gift, and asked DeAnne to give it to Maria. At some point, Maria returned the gift with a note, which she left on Carr's front porch. Carr then realized he was never going to have a good relationship with Maria.

Carr described his relationship with Craig as a friendship. After getting to know him for a few months, Carr came to believe Craig was a "pretty special man." Carr testified their relationship began to change in about May 2016, as Craig was retiring from work due to a back injury. According to Carr, around this time he began to hear Maria and Craig arguing. One time he even heard Craig call Maria a "bitch."

Carr admitted going to Giordano's home in October 2016. He testified that about a year before the homicide, he learned where Giordano lived. Carr decided to visit Giordano after he received the 60-day notice because he believed that Giordano also was having some "issues" with the Hodsons, including with Maria in particular.

Defendant admitted he used his Hi-Point .380 handgun to shoot and kill Craig on October 16. He also admitted to owning a "number of firearms," which he used for protection, target practice, and to kill "vermin."

Regarding the October 1 incident at the street fair, Carr testified he saw Maria leaving a note on his car, which he had parked on a flat area on the Pine Valley property in order to check his vehicle's fluids. Before he saw Maria leave the note he heard a "loud bang." On cross-examination, Carr stated he decided to go to the street fair to speak with Craig because he discovered a "big dent" on the passenger side door of his car, which he attributed to Maria and the "bang[ing]" noise.

Carr also testified that he had been parking his car in a similar location for about three years; that Maria's note was just "more abuse"; and that he crumbled up the note and threw it at Maria as she drove away in her car. Once he returned from the street fair, Carr made a copy of the note, responded to it in kind (as discussed *ante*), and in an effort to stop Maria's "harassment," tacked it on his front door, Regarding the portion of the note in which he called Maria "evil," Carr claimed Craig never saw it as he removed that portion of the note from his front door before Craig had a chance to read it.

Carr testified he also went to the street fair to "talk" to Craig as he had "had enough" of Maria's harassment. Carr admitted to being quite upset and losing his temper, but only after he claimed he politely asked Craig three times to speak with him about Maria. When Craig refused each time, Carr said, " 'All right . . . [we'll] do this the hard way' " and then started yelling at Craig while standing "a good distance away, six or seven feet."

Carr testified he had a "civil" conversation with Craig on October 5, when Craig gave him the 60-day notice to vacate. Carr was not surprised when he received the notice, as his attorney had given him advance warning. According to Carr, during their

conversation he and Craig agreed to a December 5 move-out date. Carr also wanted to move long before he received the 60-day notice, because his relationship with Craig had deteriorated through "Maria's efforts."

Carr testified there were incidents in mid-September and on October 5, 2016, before the homicide, that caused him to be concerned for his safety while living on the Pine Valley property. In September, defendant awakened on a Sunday to find a man in his yard attempting to steal his property. In the October 5 incident, Chad knocked on defendant's door and asked if he could "stay" with defendant. Because Carr had received the 60-day notice earlier that day, he politely declined Chad's request. According to Carr, Chad would not take no for an answer, and took an "aggressive stance," which Carr returned in kind.

On the day of the homicide, Carr testified he was "sorting stuff" as he was making plans to move, including having a yard sale. In the evening, while he was in the kitchen getting a drink of water, he saw a light go on from a motion sensor located in the front of his cabin. Concerned, Carr retrieved his Hi-Point .380 handgun, which he had left on a TV tray in the living room since October 5, after Chad had knocked on his front door. Carr next hid the weapon under his sweatshirt, behind his back in the waistband of his sweatpants.

Carr testified he went outside to investigate and saw Craig in the garage, with the main garage door open. Carr then saw a folded piece of paper on the steps of his cabin, which, on examination, was a "two-page walk through or notice," that he correctly

surmised Craig had just left. Carr realized there was no longer a threat to his personal safety.

Although Carr testified he was about a foot away from the entrance to his home, he did not disarm himself. When asked why, Carr explained he was watching a playoff baseball game on television and it "would have taken time" to go back inside and drop off the weapon, as he "didn't want to miss the game." Although Carr was concerned about missing any of the action in the game, he nonetheless went in his slippers to "confront" Craig about the two-page move-out notice or list that Craig had just dropped off, as he believed Craig had left an incorrect notice. Carr, however, did not take the notice with him, but instead placed the papers back on the steps where he had found them.

Using a flashlight, Carr walked toward the garage where Craig was working, stopping a few feet before the entrance. Carr testified that as he was approaching the garage he put the flashlight into his pocket. According to Carr, when he advised Craig that he had been given the wrong move-out notice, Craig finally "snap[ped]" and aggressively responded, "I'm fucking sick of this" as he moved toward the workbench. Stunned, Carr testified he next saw Craig grab the pole saw laying on the workbench. Carr testified, "I could see [Craig's] eyes, they were very clearly — there was anger, rage in his eyes." Carr knew the pole saw was operational, as he claimed to have seen Craig using it a few weeks before the homicide.

Carr testified Craig next came at him with the pole saw, as if Craig was "holding a rifle with a bayonet." As he moved toward Carr, Craig pulled the cord on the pole saw. Carr then went into "survival mode," as the "adrenaline pump[ed] in [his] brain." At that point, Carr was no longer thinking, but instead was reacting.

Even though Craig had never been violent towards him before that night, after Craig pulled the cord a second time, Carr drew his concealed weapon, as he believed he was under attack. Carr disengaged the safety and attempted to shoot Craig in the left shoulder as he remained about three feet outside of the garage. Because the shot appeared to have no effect on Craig, defendant assumed he missed and thus, lowered his gun and fired two more shots in the "beltline" area as Craig again pulled on the pole saw cord as he came at Carr. Although Carr claimed to have "laser focus" at that point, he could not recall how far Craig was from him, what position Craig was in with the pole saw, or how Craig was holding it, noting he then had a great deal of adrenaline pumping through his body.

As Craig came closer, he raised the blade of the pole saw about seven or eight feet above Carr's head. Carr then decided he needed to use "lethal force." Carr fired another shot into Craig's chest area. Carr saw Craig let go of the pole saw, which went "airborne," and watched Craig run out of the back of the garage "pretty fast." Unsure whether any of the shots he had fired had hit Craig, Carr followed Craig out the back door of the garage. After his eyes adjusted to the darkness, defendant saw Craig lying on the ground. Carr then left the garage to call 911.

DISCUSSION

I

Evidentiary Rulings

A. *Brief Additional Background*

As noted, on appeal Carr challenges a series of evidentiary rulings made by the court. Specifically, he objected in the trial court 1) on relevancy grounds to the statement he would be doing Craig a "favor" if he killed Maria; 2) on the grounds of relevancy, substantial danger of undue prejudice, and improper character evidence to show that Craig was a volunteer pastor and was religious; 3) on the grounds of relevancy and "improper demonstration" to the video showing an investigator attempting to start, and finally starting, the pole saw Carr claimed Craig used to carry out the attack; 4) on foundational grounds to the evidence that Carr may have caused the scratch on Craig's truck two days before the homicide; 5) and on the grounds of relevancy, improper character evidence, and substantial danger of undue prejudice to photographs and testimony that Carr had other weapons and ammunition in his cabin at the time of the homicide. Carr also argues on appeal there was cumulative error based on the alleged erroneous admission of all such evidence, which is summarized in detail *ante*.

B. *Guiding Principles*

"Except as otherwise provided by statute, all relevant evidence is admissible." (Evid. Code, § 351.) " 'Relevant evidence' means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (*Id.*, § 210; see *People v. Scheid* (1997) 16 Cal.4th 1, 13–14 [noting the

"test of relevance is whether the evidence tends ' "logically, naturally, and by reasonable inference" to establish material facts such as identity, intent, or motive [citations]' "].) We review the trial court's decision to admit evidence under an abuse of discretion standard. (*People v. Rogers* (2013) 57 Cal.4th 296, 326.)

Even if relevant, however, a court "in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) We review for abuse of discretion a trial court's ruling to exclude or admit proffered relevant evidence under Evidence Code section 352. (*People v. Hamilton* (2009) 45 Cal.4th 863, 929–930; *People v. Carrington* (2009) 47 Cal.4th 145, 195 [noting an abuse of discretion is "established by 'a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice' "].)

The rules governing the admissibility of evidence under Evidence Code section 1101 are well-settled: " ' " 'Evidence of the defendant's commission of a crime other than one for which the defendant is then being tried is not admissible to show bad character or predisposition to criminality but it may be admitted to prove some material fact at issue, such as [motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident]. (Evid. Code, § 1101.) Because evidence of other crimes may be highly inflammatory, its admissibility should be scrutinized with great care.' " ' " (*People v. Jones* (2013) 57 Cal.4th 899, 930, quoting *People v. Ewoldt* (1994) 7 Cal.4th 380, 402–

403 (*Ewoldt*).) We review for abuse of discretion a trial court's ruling on admission or exclusion of evidence under Evidence Code section 1101. (*People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 754 (*Ghebretensae*).)

Under Evidence Code section 353, subdivision (a), this court may reverse a judgment "because of erroneous admission of evidence only if an objection to the evidence or a motion to strike it was 'timely made and so stated as to make clear the specific ground of the objection.' Pursuant to this statute, ' "we have consistently held that the 'defendant's failure to make a timely and specific objection' on the ground asserted on appeal makes that ground not cognizable." ' [Citation.]" (*People v. Demetrulias* (2006) 39 Cal.4th 1, 20–21 (*Demetrulias*).) "An objection to evidence must generally be preserved by specific objection at the time the evidence is introduced; the opponent cannot make a 'placeholder' objection stating general or incorrect grounds (e.g., 'relevance') and revise the objection later in a motion to strike stating specific or different grounds." (*Id.* at p. 22.)

C. *Analysis*

1. Statement About Killing or Hurting Maria

Carr objected during in limine motions to the admission of the statement he made to Cass in the months leading up to the homicide about how he would be doing Craig a "favor by killing that bitch," referring to Maria. Carr argued in the trial court that this statement was irrelevant because he "never threatened or said anything bad about Craig," but only about Maria. He further argued the statement was unduly prejudicial and constituted improper character evidence.

The trial court found this argument unconvincing. Indeed, the record shows after Carr made this argument, the court rhetorically stated, "Does it sound as unpersuasive coming out of your [i.e., defense counsel's] mouth as it does going into my [i.e., the court's] ears?" The court then noted, "I can't believe that I would be able to divorce the two relationships, given the fact it would appear that the note incident or the statement at the fair, all kind of dovetail in with Mr. Carr being a tenant on the Hodsons' property. [¶] I don't see how I can say, well, we can talk about the decedent's relationship with Mr. Carr, but we can't talk about the decedent's spouse's relationship with Mr. Carr, which seemed to be probably more volatile than the relationship with the husband."

In ruling the statement was admissible, the court noted the "general climate of hostility" surrounding the "longstanding problematic relationship" between the Hodsons and Carr, which "culminat[ed] in the 60-day notice before the shooting." The court thus ruled the statement of hostility by Carr about killing or shooting Maria was admissible to show "context," as long as the statement was made "in and around the timeframe of this situation" leading up to the homicide.

We conclude the court properly exercised its broad discretion in finding the statement Carr made to Cass was relevant under Evidence Code section 350 and was not unduly prejudicial under Evidence Code section 352. As noted by the court, the statement went to the issue of the "longstanding problematic relationship" between Carr and the Hodsons, which ultimately led to the October 16 homicide, after the Hodsons on October 5 served Carr with a 60-day notice to vacate. (See *People v. Case* (2018) 5 Cal.5th 1, 43 [noting the prejudice contemplated by Evidence Code section 352 is not the

damage caused to the defendant that " 'naturally flows from relevant, highly probative evidence' "].) The court in the exercise of its discretion properly recognized Carr's statement about doing Craig a "favor by killing that bitch" provided "context" to the overall, and ever-increasing, hostility, not just between Carr and Maria, as he argued in the trial court and on appeal, but also between him and Craig.

The record shows after the firewood incident in early November 2014, the nature of the relationship between Carr and the Hodsons — including Craig — changed. After that incident, Maria wanted Carr to move out because of his "bad temper" and anger outbursts, as she (correctly) predicted he was "only going to cause trouble" as time went on. However, rather than serve Carr with a 60-day notice to vacate, which had been prepared, Craig instead instructed defendant to stay away from the main home and from Maria.

The record also shows as time went on, Carr became more, and not less, angry and hostile about his living situation, including towards Craig, as Carr's relationship with Maria continued to sour. Carr was particularly irritated after Maria in September 2015 returned the gift he had given her as a peace offering. DeAnne testified Carr thereafter blamed Craig for not "slap[ping]" Maria "around a little bit" to make her more "submissive."

The intensity of Carr's anger and hostility toward the Hodsons reached the proverbial boiling point on October 1, 2016. On that day, Maria left the note on the windshield of Carr's vehicle asking him to "please" not park at a specific location on the Pine Valley property. Because of that note, Carr drove to the street fair, about 20 minutes

away, parked his vehicle, and came "storming up the walkway" toward Craig, who was seated at his booth along with Maria, Cass, and DeAnne. "Irate," Carr began yelling and cursing about Maria, stating Craig needed to "put a fucking muzzle on his wife" and saying he would "teach [Maria] some respect."

The record further shows Carr took the crumbled note that Maria had left on his vehicle, made a copy, and then added his own notes in response, which he then tacked on his front door for Craig to read because Carr did not know where Maria's "imaginary line of death" was. Carr in the note instructed Craig to keep "that evil thing you call a wife" away from his vehicles. The record shows as a result of the October 1 street fair incident, Craig reluctantly concluded that Carr needed to move from the Pine Valley property. It was this decision that ultimately would lead to the homicide.

Indeed, after Maria's note and the street fair incident, the record shows Carr began sending Craig "angry, hostile text messages" that scared Maria. In one such text message, Carr stated that he had had "[e]nough of this bullshit harassment" and that Maria "shame[d] herself and undermine[d] [Craig's] moral authority as a pastor." In another text message sent a day after the street fair incident, Carr tellingly wrote, "This bear has been poked one too many times by your wife. No more." In this same message, Carr wrote he was going to consult with a lawyer on October 4 and begged to be "left alone and in peace in the last year of [his] life." Despite asking to be "left alone," Carr sent another text message later that day regarding the notes he had posted for Craig on his own front door.

On October 3, Carr messaged Craig not to waste money on an unlawful detainer, as defendant wanted "out of this cold, rat-infested shit hole as fast as" possible. In this same message, defendant reminded Craig to tell Maria to "keep her hands off [of his] vehicles," again in reference to the October 1 incident.

On October 5, Craig served Carr with a 60-day notice to vacate. The record shows Maria then was so concerned about Carr's reaction to the notice that she pre-dialed 911 and went outside with her phone as she watched Craig deliver it to defendant.

The record shows Carr was still angry about the October 1 note incident more than a week later. On October 9, Carr messaged Craig stating he would get a "TRO" against Maria if she did not stay away from him and his "belongings." Carr in this message also chided Craig for not communicating with him, stating, "sooner or later we will have to talk like adults."

Carr's frustration over Craig's lack of communication continued to escalate. On October 14, two days before the homicide, Carr messaged Craig about needing a new hose. Carr also wrote, "I guess you think it is funny to ignore my texts, but it is not." Carr in this message also complained about Chad coming to his door asking for "food, water, or to use the bathroom," and asked Craig to keep his "F'ing crazy ass family away from [him]." During this same time frame, Carr also complained to DeAnne that the Hodsons were harassing and evicting an allegedly "terminally ill man."

On the day of the homicide, Carr wrote Craig stating it was his "[f]inal text message"; accused Craig of "being rude and evasive" for not responding to his myriad messages, including about the hose; suggested in the future he would send the Hodsons

registered mail or leave notes on their car, again in reference to the October 1 incident involving Maria; and referred to Craig as being a "hypocrite" for his "false swearing to the Lord."

The record shows at 2:15 p.m. that day, Craig wrote back, referring to defendant as "Mr. Carr." Craig messaged he found it difficult to communicate because Carr was "so full of hostility," as defendant's messages and conversations were "too argumentative and full of smears." Carr in response messaged that all he wanted was "normal" communication, as he was "trying to be decent," but that Craig seemed to "want [him] to suffer more." Carr also asked when Craig intended to replace the hose. A short time later, Carr again messaged Craig, calling him "bozo" and imploring him to just answer "simple questions."

After more messages between them, Craig at 3:42 p.m. messaged defendant not to send anymore text messages for the remainder of the day. Later that evening, in response to the "move-out" sheet or list Craig had left on the steps of Carr's cabin, defendant took his fully loaded Hi-Point .380 handgun and "confronted" Craig in the garage. It was then defendant shot and killed Craig.

Thus, the record shows an escalation of hostility between defendant and Craig over what defendant perceived as Maria's ongoing harassment of an allegedly "terminally ill man." It was this hostility, directed at both Craig and Maria, that led to Carr's eviction from the Pine Valley property, and ultimately, to the homicide. On this record, we find the court properly ruled Carr's statement he would be doing Craig a "favor" if he "killed that bitch" was relevant and its admission was not unduly prejudicial.

Carr also objected to the statement about killing Maria on the ground it constituted improper character evidence under Evidence Code section 1101, subdivision (a) because there was no evidence it was ever relayed to the Hodsons. We reject this contention.

First, the record shows defendant made this statement to Cass, an individual who was *related* to Craig and Maria. Cass was both Craig's older brother and Maria's brother-in-law and their two families had been very close for decades. Second, as opposed to merely defendant's propensity for violence, the statement clearly was admissible to prove intent or motive or absence of accident, as it showed, as summarized *ante*, Carr's increasing hostility and anger towards the Hodsons, which ultimately led to his eviction and the shooting of Craig (see Evid. Code, § 1101, subd. (b)).

Third, the statement also was separately admissible to support and attack the credibility of witnesses, including Carr, who argued he shot Craig in self-defense after Craig allegedly "snapped." (See Evid. Code, § 1101, subd. (c) [noting that "[n]othing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness"]; see also *People v. Stern* (2003) 111 Cal.App.4th 283, 296 [noting the admission of the statement by the defendant he had stabbed somebody else just a couple of days earlier before he made a threatening phone call about slitting someone's throat was not error because the "evidence of the uncharged offense was received solely on the issue of [the defendant's] believability-an obviously important issue"].) For this reason, we also conclude the evidence in question was not inadmissible under Evidence Code section 1101.

For similar reasons, we find the comment Carr made in front of Silberman and Loxas about wanting to shoot Maria in the "ass," which he made around the same time as his statement to Cass about killing Maria, also was relevant, and its admission was neither unduly prejudicial nor improper character evidence.[3]

2. Craig's "Pastor Status" and Religious Activities

Carr also moved in limine to exclude evidence that Craig was a volunteer pastor, arguing it was unduly prejudicial under Evidence Code section 352 and was improper victim character evidence under Evidence Code section 1103 to show Craig was a "peaceful person" because the "nature" of the relationship between him and Craig was allegedly that of "landlord/tenant."[4] The court denied Carr's motion. Carr on appeal contends it was error to admit such evidence *and* evidence of Craig's "religious activities" in general.

Assuming, without deciding, that Carr's objection in the trial court to evidence that Craig was a volunteer pastor preserved his argument on appeal that evidence of Craig's "religious activities" also should have been excluded, we conclude the court properly

---

[3] Because we reach the merits of this issue, we need not address whether Carr forfeited this claim of error by failing to object in the trial court to the comment he made about shooting Maria in the "ass."

[4] The record suggests the People filed a supplemental motion in limine to admit evidence that the nature of the relationship between Craig and Carr was that of "pastor/worshiper," inasmuch as Craig had baptized defendant into "the church." However, it does not appear the supplemental motion in limine was included in the record.

exercised its discretion in finding the probative value of this evidence was not substantially outweighed by substantial danger of undue prejudice. (See Evid. Code, § 352.) As summarized *ante*, the record shows the nature of the relationship between Craig and defendant was much more complex than that of a landlord and tenant, as Carr argues on appeal.

Indeed, the record shows Carr developed a special bond with Craig because Craig was defendant's pastor and because Craig had baptized him into the church. Carr himself testified that, after a few months, he found Craig to be a "pretty special man."

The record also shows Carr himself repeatedly referenced religion and Craig's religious activities as defendant's relationship with Maria, and then Craig, soured. As noted *ante*, during the early November 2014 firewood incident, Carr became angry after Maria told him to wait until Craig returned home to take firewood, telling Maria she needed to "start acting like a Christian." Carr also complained to Silberman that *he* and not Craig should have been a "preacher" because he knew "more about the word of God" than Craig. Carr also reached out to and confided both in Cass and DeAnne, not because the Hodsons were defendant's landlord, but because of Carr's activities in the church and his participation in bible study at the Hodsons's home.

The record bears this out. Indeed, at 6:42 p.m. on the day of the homicide, Carr sent DeAnne, whom he referred to as "sister Dee" in reference to their faith-based relationship, a text message, as summarized *ante*. In this message, defendant confided he could not "stop crying," that "all [he] wanted was to attend a short bible study and Maria had to provoke [him]," and that he was, "for the first time in [his] life," "afraid" because

he was "losing [his] faith." Defendant then asked DeAnne to "forgive" him, as he felt "truly alone."

Moreover, almost immediately after the homicide, Carr called 911 to report the shooting. During the 911 call, which was played for the jury, Carr reported his "pastor" needed a paramedic, as he had just "shot the son of a bitch." When the 911 operator asked Carr if the person he had just shot was his "landlord," defendant responded, "Yeah, and he's also my pastor. Nice guy."

Clearly, these — among many other[5] — statements by Carr show the despair he felt not because the landlord-tenant relationship with Craig was coming to an end, but because in his view, Maria had permanently interfered in his relationship with Craig the pastor, and with his ability to attend bible study and church services where he had made other meaningful relationships including with Cass and DeAnne. The court therefore properly exercised its broad discretion when it denied Carr's motion to exclude evidence of Craig's status as a pastor and his religious activities in that capacity, as such evidence was extremely relevant, was continually referenced by defendant himself, and the probative value of such evidence was not substantially outweighed by the probability that its admission would create substantial danger of undue prejudice.

---

5 As noted *ante*, in the days leading up to the homicide, Carr sent myriad text messages to Craig making references to Craig's status as a pastor and his role in the church. For example, shortly after the October 1 street fair incident, Carr wrote that Maria could "have her bible study back," as she "need[ed] it more than [him]" and that Maria "shame[d] herself and undermine[d] [Craig's] moral authority as a pastor." On the day of the homicide, Carr also wrote, "when you baptized me you mentioned false swearing to the Lord. Remember that when you get behind the pulpit today. Hypocrite."

We also conclude this evidence was not unlawful character evidence under Evidence Code section 1103. Briefly, subdivision (a) of this statute provides in relevant part that in a criminal action, "the character or trait of character . . . of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by [Evidence Code] Section 1101 if the evidence is: [¶] (1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character. [¶] (2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1)."

However, as we have summarized *ante*, evidence of Craig's status as a pastor and his religious activities as such was not admitted to show Craig was a violent or peaceful person "on a specified occasion," as set forth in Evidence Code section 1101, subdivision (a), and as referenced by Evidence Code section 1103, but rather to show the nature of the relationship between defendant and Craig, which went well-beyond that of landlord and tenant, as we have noted. We thus also reject this claim of error.

3. Video of Investigator Attempting to Start the Pole Saw

Carr next argues the court erred in denying his motion in limine to exclude the video of the investigator attempting to start, and finally starting, the pole saw because it was irrelevant and was too dissimilar to what happened on the night of the homicide. The record shows the prosecutor argued the video corroborated the testimony of Craig's son Christian that the pole saw took minutes to start and was — in Christian's words — "a piece of crap," which in turn supported the People's theory that Carr's self-defense claim was "made up" as Craig would not have chosen it *if* he in fact attacked Carr. The court agreed the video was admissible and thus denied Carr's motion in limine. As

summarized *ante*, the video was played for the jury. It showed the investigator started the pole saw on the fourth attempt.

" 'Evidence of demonstration engaged in to test the truth of testimony that a certain thing occurred is admissible only where (1) the demonstration is relevant, (2) its conditions and those existing at the time of the alleged occurrence are shown to be substantially similar and (3) the evidence will not consume undue time or confuse or mislead the jury. [Citation.] The party offering the evidence bears the burden of showing that the foundational requirements have been satisfied.' [Citation.] [¶] The probative value of evidence of the reenactment of a crime depends primarily on its similarity to the events and conditions that existed at the time of the crime. [Citations]." (*People v. Rivera* (2011) 201 Cal.App.4th 353, 363 (*Rivera*).)

"To be admissible, demonstrative evidence must . . . accurately depict what it purports to show. [Citation.] The demonstration . . . ' . . . "must have been conducted under at least substantially similar, although not necessarily absolutely identical, conditions as those of the actual occurrence." ' [Citations.] ' "Within these limits, ' "the physical conditions which existed at the time the event in question occurred need not be duplicated with precision nor is it required that no change has occurred between the happening of the event and the time" ' " ' of the reenactment. [Citations.]" (*Rivera*, *supra*, 201 Cal.App.4th at p. 363.) "On appeal, we review the trial court's ruling on the admissibility of [such] evidence for abuse of discretion. [Citations.]" (*Id.* at p. 362.)

Here, we conclude the court properly exercised its broad discretion when it ruled to admit the video of the investigator attempting to start the pole saw. As we noted, the primary issue in this case is whether Carr killed Craig in self-defense, as he argued, based on his story that Craig picked up the pole saw and not only pointed the blade at Carr as he approached, but, according to defendant's testimony, *also* attempted three times to *start* the pole saw ostensibly to make the weapon even more effective. In addition, Carr testified that he saw Craig using the pole saw a few weeks before the homicide. Carr therefore knew the pole saw was operational. The video of the investigator attempting to start the pole saw, and the difficulty the investigator encountered in finally doing so, was thus highly probative on the self-defense issue.

In addition, the video was relevant to allow the jury to hear the noise the pole saw made when it was in fact started, as the record shows the video captured the sound of the pole saw from various reference points. Although the defense argued it did not intend on arguing the pole saw was ever started by Craig on the night of the homicide, the record shows there was conflicting evidence on this issue: the paramedic who was with Carr after the homicide testified that Carr could not remember whether Craig had succeeded in starting the pole saw because Carr was full of adrenalin. Inasmuch as multiple witnesses testified that, while in the main house, they never heard the sound of the pole saw coming from the garage on the night of the homicide, we conclude the court properly exercised its broad discretion when it ruled to admit the video in order to allow the jury the opportunity to hear the noise it made both when someone was attempting to start it and when it was actually operating.

Moreover, we conclude the investigator's attempt to start the pole saw was under " ' "substantially similar, although not necessarily absolutely identical, conditions" ' " (see *Rivera*, *supra*, 201 Cal.App.4th at p. 363) to those on the night of the homicide, when Craig allegedly attempted to start the weapon. In both cases the pole saw had not been used for days at a time; in both cases the individuals made multiple attempts to start the pole saw while it was cold; and in both cases the pole saw was in the same, or nearly the same, condition, except that the investigator, who had no familiarity with the saw, broke a plastic piece off the starting mechanism that otherwise did not affect the saw's operation. We thus reject this claim of error.

4. Scratch to Craig's Truck

Carr objected to the admission of evidence that Craig and/or his son Craig II believed that about three days before the homicide, defendant had caused a large white scratch on the passenger side of the truck belonging to Craig. At trial, Carr argued this evidence was inadmissible for lack of foundation, as there was no evidence tying him to the vandalism. The prosecutor argued that the scratch was not on the truck during the day in question, when Craig and Craig II had been working at a rental property; that the truck had been parked on the Hodson property after the family, including Craig, had gone to bible study on Thursday evening; and that, because Carr was on the property that night, there was an inference to support a finding he had caused the scratch because of his ongoing hostility toward Craig, which went to the issue of self-defense, or lack thereof.

Along these same lines, the prosecutor also argued the importance of this evidence was not that Carr caused the scratch, as he had not been charged with any crime, but rather Craig's response to the scratch, which was to tell his son that, while Carr *may* have damaged the truck, it was not a big deal as Carr soon would be moving out.

The court ruled to admit the evidence, noting it was important to show Craig's response to the suggestion that Carr may have committed the vandalism. The court's ruling was made with the caveat that Craig II "concede that there's no evidence that this was perpetrated by the defendant."

Carr on appeal contends the court erred in admitting this evidence not only because it lacked foundation, as he argued in the trial court, but also because it was unduly prejudicial, was improper opinion testimony, and unlawful character evidence. Because Carr failed to object on the latter two grounds in the trial court, we conclude he has forfeited this claim of error. (See § Evid. Code, § 353; see also *Demetrulias, supra*, 39 Cal.4th at p. 20 [noting the general rule that a " ' " 'defendant's failure to make a timely and specific objection' on the ground asserted on appeal makes that ground not cognizable" ' "].) In any event, reaching the merits we reject Carr's claim of error.

We conclude the trial court properly exercised its discretion in admitting the evidence of the scratch on Craig's truck, which appeared only a few days before the homicide.

We further conclude the scratch was probative on the issue of self-defense to show Craig's response once he saw it. Indeed, Craig II testified his father was calm and subdued when they both saw the scratch on Friday morning, just two days before the homicide, telling his son that it was not a big deal, despite the fact the truck was relatively new, and the scratch was large. Craig's calm response suggested that even though he and/or Craig II believed Carr may have intentionally scratched the truck, Craig was not angry or hostile toward defendant. Thus, whether Carr actually caused the scratch was not germane to the issue of whether Craig himself believed defendant had caused the scratch, and Craig's response despite such belief, which provides a separate basis for the admission of this evidence.

Moreover, assuming without deciding that Carr's foundational objection preserved his claim on appeal that the admission of the scratch was error under Evidence Code section 352, we conclude the court properly found such evidence was not unduly prejudicial, as the testimony of Craig II and Maria on this issue was relatively brief, and the issue of a scratch on a truck pales in comparison to the shooting committed by defendant two days later. (See *People v. Eubanks* (2011) 53 Cal.4th 110, 144 (*Eubanks*) [noting that the potential prejudice for purposes of Evidence Code section 352 "is 'decreased' when testimony describing the defendant's uncharged acts is 'no stronger and no more inflammatory than the testimony concerning the charged offenses' "]; see also *Ewoldt*, *supra*, 7 Cal.4th at pp. 402–403.)

Finally, even if Craig (and Craig II) believed defendant had scratched the truck, the evidence of Craig's response to the scratch was relevant on the issue of self-defense to show Craig was calm and not hostile toward Carr, as Craig II and Maria both testified. Such evidence was thus properly admitted to prove a material fact at issue that was unrelated to defendant's alleged bad character or predisposition to criminality (Evid. Code, § 1101, subd. (a)), and was also not improper lay opinion. (See *People v. Farnam* (2002) 28 Cal.4th 107, 153 [noting a "lay witness may testify to an opinion if it is rationally based on the witness's perception and if it is helpful to a clear understanding of his [or her] testimony"]; see also Evid. Code, § 800 [providing a nonexpert witness may testify in the "form of an opinion" if the opinion is "(a) Rationally based on the perception of the witness; and (b) Helpful to a clear understanding of his [or her] testimony"].)

Carr nonetheless contends the admission of the truck scratch was prejudicial error because it allowed the jury to infer he was angry at Craig, when in fact the record evidence merely showed he "complained" about Maria. Carr's contention is frivolous, as it ignores the record in the instant case, which clearly shows — based on his threatening text messages, his behavior at the street fair about two weeks before the homicide, the notes he tacked to his own door for Craig to read, and his text message to DeAnne minutes before the homicide — that defendant was very angry and upset not only at Maria, but also at Craig, particularly after October 5 when he was served with a 60-day notice to vacate.

In addition, Carr's contention he was not angry at, or hostile toward, Craig would require this court to act as fact finder, reweigh the evidence and the credibility of witnesses, and make new findings, which as a court of review we cannot and will not do. (See *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206 [noting a reviewing court does not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses].) We thus reject this claim of error.

5. Admission of Photographs of Ammunition and Weapons other than the Murder Weapon Found in Defendant's Cabin

Carr next contends the court prejudicially erred in admitting photographs of other weapons and ammunition found in his cabin on the grounds such photographs were irrelevant, constituted improper character evidence, and were unduly prejudicial. We disagree.

We conclude the trial court properly exercised its broad discretion in admitting such photographs to show Carr's "state of mind" when he shot and killed Craig. Indeed, Carr testified that after the light on his outside motion sensor illuminated, he picked up his fully loaded Hi-Point .380 handgun, as he claimed there allegedly had been a rash of recent incidents on the Pine Valley property that had caused him to be concerned for his safety. Carr, however, not only chose a fully loaded weapon, but one he could conceal in his waistband, when he went outside to investigate. The record shows Carr had other weapons in his cabin that he also could have chosen when he went outside, but those weapons — including a rifle and revolver — may not have been as easy to conceal as the Hi-Point .380 handgun, which he *hid* behind his back under his sweatshirt. In light of

Carr's self-defense claim, we conclude the court properly exercised its discretion when it ruled to admit this evidence to show that defendant had choices other than the Hi-Point .380 handgun to secure his personal safety on the night of the homicide.

In addition, this photographic evidence was not so inflammatory as to unduly prejudice Carr, as he claims. (See *Eubanks*, *supra*, 53 Cal.4th at p. 144; *Ewoldt*, *supra*, 7 Cal.4th at pp. 402–403.) Indeed, the record shows the jury also heard that Carr in the past had fired his weapons on the Pine Valley property, including for target practice and to kill "vermin," as he testified. The jury also heard that Christian lawfully owned a shotgun, which he took with him after hearing gunshots on the night of the homicide, and that Craig owned a single-shot rifle he kept as heirloom. Thus, there was plenty of "gun evidence" admitted in this case.

Carr nonetheless relies on a series of cases including *People v. Henderson* (1976) 58 Cal.App.3d 349 (*Henderson*) and *People v. Archer* (2000) 82 Cal.App.4th 1380, 1392 (*Archer*) to support his prejudicial error claim. *Henderson* concluded the admission of a second loaded weapon found in the pocket of a pair of defendant's trousers in the defendant's master bedroom was error because it had no relevancy whatsoever to the two offenses the defendant in *Henderson* was facing, assault with a deadly weapon against police officers. The officers in *Henderson* obtained and executed a search warrant that specifically excused compliance with the "knock and notice" requirements of section 1531. (*Henderson*, at p. 352.) Unaware officers were breaking into his home, the defendant in *Henderson* — who was *not* in the master bedroom — fired two shots, including one that went through a wall. Officers subsequently found the defendant in a

bathroom with a gun in his hand. It was established that the two shots had come from the gun held by the defendant, and not from the gun located in his trousers. (*Id.* at p. 353.) In reversing the defendant's conviction, the *Henderson* court found the trial court had prejudicially erred in not submitting to the jury the question of whether the officers were engaged in the "performance of their duties" for purposes of former section 245, subdivision (b). (*Henderson*, at p. 358.) The court found this error, which required reversal of the defendant's convictions, was "scarcely open to question." (*Id.* at p. 359.)

Despite reversing the defendant's conviction, the *Henderson* court went on to consider the defendant's contention that the trial court had erred in permitting the prosecutor over objection to cross-examine the defendant about his ownership of the second gun found in the master bedroom. On this issue, the *Henderson* court stated — in what could be considered dictum — that "[n]either logic, experience, precedent nor common sense supports the proposition that, from the possession in one's home of two loaded guns, a reasonable inference may be drawn that the possessor has an intent to commit the crime of an assault with a deadly weapon. Evidence of possession of a weapon not used in the crime charged against a defendant leads logically only to an inference that defendant is the kind of person who surrounds himself with deadly weapons — a fact of *no relevant* consequence to determination of the guilt or innocence of the defendant." (*Henderson*, *supra*, 58 Cal.App.3d at p. 360; see also *Archer*, *supra*, 82 Cal.App.4th at p. 1384 [reversing a defendant's first degree murder conviction based on the unlawful admission of an extrajudicial statement of a codefendant, but also finding

error in the admission of "several knives, books and videotapes which had only marginal relevance"].)

We conclude *Henderson* and cases like it, which merely stand for the proposition that evidence of a defendant's possession or ownership of other potentially deadly weapons is irrelevant to show the defendant committed a crime with a specific weapon, is inapposite here. Unlike *Henderson*, here the fact that Carr chose a weapon that was easily concealed, when he also had other weapons inside his cabin there were also available to him that may not have been as easy to conceal, was clearly relevant to defendant's credibility and his self-defense theory. (See *People v. Smith* (2003) 30 Cal.4th 581, 613–614 [finding trial court properly admitted evidence the defendant owned another unloaded gun and ammunition that fit neither the unloaded gun nor the murder weapon because such evidence "was relevant to his state of mind when he shot [the victim]," which the defendant claimed was accidental, as it showed the defendant could have taken, but chose not to take, an unloaded gun to intimidate the victim, which was "relevant to defendant's credibility"].) We thus reject this claim of error.[6]

6. Harmless Error

Finally, even *if* the court erred in admitting any of the categories of evidence discussed above, we conclude such error was harmless under the standard enumerated in *People v. Watson* (1956) 46 Cal.2d 818, 836. (See *People v. Cunningham* (2001) 25

---

6 Because we have found the court did not abuse its discretion in admitting the categories of evidence challenged by Carr on appeal, we reject his cumulative error claim. (See *People v. Ghobrial* (2018) 5 Cal.5th 250, 293 [noting if there are no errors to cumulate, there obviously can be "no possible cumulative prejudice"].)

Cal.4th 926, 998–999 (*Cunningham*) [noting in "general, the ' "application of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense" ' " and thus, an evidentiary ruling, "if erroneous, is 'an error of law merely,' which is governed by the standard of review announced in *People v. Watson* (1956) 46 Cal.2d 818, 836 [(*Watson*)]" and not by the beyond-a-reasonable-doubt standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 24].)

Under the *Watson* standard, we determine whether it is reasonably probable Carr would have achieved a more favorable result absent the error. " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' [Citations.]" (*Cunningham, supra*, 25 Cal.4th at p. 938.) On this record, we find no reasonable probability of a more favorable result absent the admission of any of the evidence discussed *ante*.

As noted, it is undisputed that Carr shot and killed Craig. The record shows at closing, Carr argued that there was "only three real possibilities" or "options" based on the evidence: "Option one: that there's a reasonable possibility that Paul Carr acted in perfect self-defense. What that means is that in Paul's mind, it was reasonable to believe that he was being attacked with force likely to produce great bodily injury or death, and that he reasonably believed that he needed to defend himself with lethal force. If there's reasonable doubt as to that fact, Paul is not guilty of all the counts that the judge read to you, because it's required that the prosecution prove those beyond a reasonable doubt . . . .

"Option two is whether there's a reasonable possibility that he acted in imperfect self-defense. Now, the only difference there is, yes, there's reasonable doubt as to whether he acted in self-defense, but it was either unreasonable to think that he was being attacked with great bodily injury or death or unreasonable for him to react with deadly force . . . .

"And then option three is the one that the government wants you to accept, that there's no reasonable possibility that Paul acted in self-defense at all, meaning there's no reasonable possibility that Craig picked up the chainsaw, and that they have completely excluded self-defense beyond a reasonable doubt.

"What it comes down to is whether there's a reason to think self-defense is here. That's it. That's all you have to focus on. Not the implied malice or expressed malice, none of that. We can just focus our attention." Thus, as the defense aggressively argued during closing, the *key* issue in this case was self-defense.

As summarized and discussed already in great detail *ante*, substantial record evidence shows that in the weeks and days leading up to the homicide, Carr had become increasingly hostile toward the Hodsons, as demonstrated by the October 1 street fair incident; the myriad text messages he sent Craig after that incident, which messages scared Maria; the notes he posted on his own door for Craig because he did not know where "Maria's imaginary line of death" was on the Pine Valley property; and his text message to DeAnne sent *just minutes* before the homicide expressing his despair. Thus, even without the statements Carr made to Cass and Silberman about wanting to shoot or harm Maria; or the fact that Craig was a pastor and had baptized defendant; or the video

of the investigator attempting to start, and finally starting, the pole saw; or the scratch to Craig's truck three days before the homicide; or the photographs of other guns or weapons he kept in his cabin; there was still overwhelming *other* evidence to support his first degree murder conviction and the jury's true findings on the two enhancements.

II

Resentencing

As previously noted, the jury in this case found true an allegation that in the commission of the murder, Carr personally and intentionally discharged a firearm causing great bodily injury or death within the meaning of former section 12022.53, subdivision (d). That statute provided an additional and consecutive term of 25 years to life. In August 2017, the trial court sentenced Carr to the mandatory term of 25 years to life for the murder conviction, plus a consecutive 25-year-to-life term for the firearm enhancement allegation pursuant to section 12022.53, subdivision (d).

Carr contends the matter should be remanded for resentencing considering recently enacted Senate Bill No. 620, which allows the trial court to exercise discretion with respect to striking the firearm enhancement. When sentencing Carr in August 2017, the trial court lacked the authority to strike the firearm enhancement. (See, e.g., *People v. Kim* (2011) 193 Cal.App.4th 1355, 1362–1363, citing former § 12022.53, subd. (h).) However, after Carr's sentencing, the Legislature passed Senate Bill No. 620, which became law effective January 1, 2018. (Sen. Bill No. 620 (2017–2018 Reg. Sess.).) This bill amended sections 12022.5 and 12022.53 to give trial courts discretion, "in the interest of justice pursuant to Section 1385," to "strike or dismiss an enhancement otherwise

required to be imposed" by those statutes (former § 12022.5, subd. (c), as amended by Stats. 2017, ch. 682, § 1, former § 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2.) The discretion conferred by the statute "applies to any resentencing that may occur pursuant to any other law." (*Ibid.*)

We agree with other courts that the amendments to sections 12022.5 and 12022.53 apply retroactively to cases not yet final on appeal. (See, e.g., *People v. Vela* (2018) 21 Cal.App.5th 1099, 1113–1114, citing *In re Estrada* (1965) 63 Cal.2d 740, 742–748 [courts presume that absent evidence to the contrary, the Legislature intends an amendment reducing punishment under a criminal statute to apply retroactively to cases not yet final on appeal]; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090–1091; *People v. Hurlic* (2018) 25 Cal.App.5th 50, 56.) As we explained in *People v. Arredondo* (2018) 21 Cal.App.5th 493, 507, "a statute which lessens the penalty for a crime gives rise to an inference the Legislature intended the change to apply to all nonfinal cases. [Citations.] Provisions which give trial courts discretion to reduce a sentence previously required by the Penal Code are nonetheless changes which benefit offenders who committed particular offenses or engaged in particular conduct and thereby manifest an intent by the Legislature that such offenders be given the benefit of that discretion in all cases which are not yet final." Accordingly, we vacate the sentence and remand *only* for resentencing.

DISPOSITION

The sentence of Carr is vacated and the matter is remanded *only* for resentencing to allow the trial court to exercise its discretion as to whether the firearm enhancement under section 12022.53, subdivision (d) should be stricken pursuant to section 1385. (See § 12022.53, subd. (h).) In all other respects, Carr's remaining conviction is affirmed.

BENKE, Acting P. J.

WE CONCUR:

O'ROURKE, J.

DATO, J.